

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
1:16-cv-01038

Pursuant to Federal Rules of Civil Procedure 16(f) and 37(c) and Local Rule 7.3,
Defendant Duke University (“Duke”), through counsel, moves this Court for an order
striking the report and excluding any opinion testimony from Gary R. Albrecht, Ph.D.

Duke received Dr. Albrecht's report as part of a July 31, 2017 production of documents, thirteen days after Ms. Qayumi's expert-disclosure deadline and without any written disclosure or acknowledgment of the lapsed deadline. After receiving this report, Duke's counsel asked Ms. Qayumi's counsel whether he intended to present expert testimony from Dr. Albrecht, pursuant to Federal Rules of Evidence 702, 703, or 705. Ms. Qayumi's counsel has not provided any substantive response to this inquiry or otherwise clarified Dr. Albrecht's intended role in this case. To the extent that Ms. Qayumi intends to present expert testimony from Dr. Albrecht, Duke files this Motion to exclude this testimony and obtain such further relief as set out below.

The particular bases for this Motion are presented in the accompanying Brief in Support of Duke's Motion to Exclude. In further support of this Motion, Duke also

directs the Court to the following exhibits, which are being attached to the Motion pursuant to LR 7.3(e), and are referenced in Duke's accompanying Brief:

Exhibit A	Ekstrand email to Duke counsel (July 31, 2017)
Exhibit B	Albrecht report (May 19, 2017)
Exhibit C	Wells email to Ekstrand (Aug. 3, 2017)
Exhibit D	Wells letter to Ekstrand (Aug. 3, 2017)
Exhibit E	Ekstrand – Jackson email correspondence (Aug. 4, 2017)

For the reasons set forth in the accompanying Brief, Duke respectfully requests that the Court enter an order: (1) excluding Gary R. Albrecht, Ph.D. from offering any opinions in this case pursuant to Federal Rule of Evidence 702, 703, or 705; (2) awarding Duke its expenses incurred because of noncompliance with the scheduling order, pursuant to Rule 16(f)(2) of the Federal Rules of Civil Procedure; (3) awarding such other further relief as the Court deems just and proper, including those authorized by Rule 37(b)(2)(A)(ii)-(vii). In the event the Court denies this Motion, Duke respectfully requests leave to depose Dr. Albrecht before the close of discovery on October 18, 2017.

This the 14th day of August, 2017.

/s/ Dixie T. Wells

Dixie T. Wells
N.C. State Bar No. 26816
Christopher W. Jackson
N.C. State Bar No. 42939
ELLIS & WINTERS LLP
300 N. Greene, Suite 800
Greensboro, NC 27401

Tel. (336) 217-4193
Fax (336) 217-4198
dixie.wells@elliswinters.com
chris.jackson@elliswinters.com

Thomas H. Segars
N.C. State Bar No. 29433
ELLIS & WINTERS LLP
P O Box 33550
Raleigh, NC 27636
Tel. (919) 865-7000
Fax (919) 865-7010
tom.segars@elliswinters.com

Attorneys for Duke University

CERTIFICATE OF SERVICE

This is to certify that I have electronically filed a copy of the foregoing Motion to Exclude with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Robert C. Ekstrand
Stefanie Sparks Smith
Ekstrand & Ekstrand LLP
110 Swift Avenue, Second Floor
Durham, North Carolina 27705
rce@ninthstreetlaw.com
sas@ninthstreetlaw.com

This the 14th day of August, 2017.

/s/ Dixie T. Wells
Attorney for Duke University